

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KERRI M. HILL,)	
)	
Plaintiff,)	8:04CV613
)	
v.)	
)	
EMERGENCY DENTAL, INC.,)	
et al.,)	MEMORANDUM AND ORDER
)	
Defendants.)	
_____)	

Defendants Derr and Emergency Dental, Inc. have moved to compel plaintiff to supplement her Rule 26(a)(2) disclosures, specifically to require plaintiff's expert witness to update his report based on changes in facts since it was prepared. No motion is necessary, however, because the court's progression order already required supplementation by the expert disclosure deadline. In addition, Rule 37(c) precludes the use at trial of evidence not disclosed in accordance with the court's orders.

After the filing of the motion counsel conferred in a further effort to resolve this dispute, and it appears that a supplemental report was promised and was to have been provided before now. It therefore appears the motion is moot. I shall permit counsel to inform me further in that respect.

Plaintiff has also filed a motion to compel disclosure of information sought in her third set of interrogatories and requests for production. In response, the defendants have indicated that the parties "continue to attempt to resolve their differences without court intervention," and if unable to do so, will file a motion for protective order. See, filings 118, 121.

A statement withdrawing a portion of the defendant Derr and Emergency Medical's motion, but no motion for protective order has been filed, so it is inferrable that plaintiff's motion, too, is now moot by virtue of the agreement of counsel. I shall permit counsel to inform me further in this respect, as well.

IT THEREFORE HEREBY IS ORDERED:

Counsel are given five working days to inform the undersigned of the status of their agreements or lack thereof, concerning the two motions to compel and specifying what motions or portions thereof remain in dispute.

Dated June 19, 2006.

BY THE COURT

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge